SINGAPORE REPORTS.

REX v. SHUM SOO.

[App. Crim. Juris. (Gordon-Smith, Ag. C.J., Laville, and Taylor, JJ.) December 18, 1948]

[Singapore — Special Case No. 4 of 1948]

Criminal Procedure Code Ss. 117 and 124 — Evidence of identification — Statement in course of police investigation.

In this case where the accused was charged with the offence of criminally intimidating one Lim Teo Chiang, the Complainant in the course of his evidence at the trial said: "A Sergeant and two detectives came and I pointed out accused to them because he had hit and threatened me". The Sergeant in his evidence said "On arrival there I met the Complainant who pointed out accused as the man who had threatened him on the previous night". In a special case stated by the learned District Judge, the question was raised whether this evidence of the Sergeant was properly admitted.

Held, (1) that if the words were a literal transcript of what the witness said, they are not inadmissible; (2) that if the words really mean "Having been previously told to point out the man who threatened him, if present, the complainant pointed out accused", then they are unexceptionable and clearly admissible in evidence; (3) that if the words mean "The complainant pointed out accused saying 'he is the man who threatened me' ", then the latter part of the evidence relating to a statement made to him by another person would be inadmissible if it was made in the course of a police investigation; (4) that the note in this case is ambiguous and the evidence recorded did not show whether or not the Sergeant was acting in the course of a police investigation at the material time and therefore the case did not contain the materials on which an exposition of the provisions of Sections 117 and 124 of the Criminal Procedure Code could be based.

SPECIAL CASE.

Ahmad bin Ibrahim — Amicus Curiae.

L. Rayner (D. P. P.) for the Crown.

The Judgment of the Court of Criminal Appeal was given by :—

Gordon-Smith, Ag. C. J. : — This is a special case stated by the learned District Judge of the Fourth Criminal Court. The material facts are as follows :—

> Shum Soo was charged with the offence of criminally intimidating the complainant, one Lim Teo Chiang, on the afternoon of the 7th May, 1948. That evening the complainant lodged a report at the Havelock Road Police Station. The report mentioned Shum Soo by name but did not give his address or describe his personal appearance. The next morning the complainant telephoned from the workshop where he was employed to a Police Inspector at another station in the Division in which Havelock Road is situated. A Police sergeant and two detectives went to the workshop where they found the complainant and the accused and arrested the latter.

In his evidence at the trial the complainant said :—

> A sergeant and two detectives came and I pointed out accused to them because he had hit and threatened me.

This is clearly admissible.

The sergeant, in his evidence, said :—

> On arrival there I met the complainant who pointed out accused as the man who had threatened him on the previous night.

The question put by the learned District Judge is as to whether the evidence quoted was properly admitted.

The primary objection to this part of the evidence is that the note is ambiguous.

If these words are a literal transcript of what the witness said, they are not inadmissible.

If they really mean :—

> Having been previously told to point out the man who threatened him, if present, the complainant pointed out accused

they are unexceptionable. This is the manner in which such evidence should be, and often is, given.

The District Judge seems to imply, however, that this passage is an over-concise way of recording :—

> The complainant pointed out accused, saying 'he is the man who threatened me'.

If this is the real meaning of the passage, the sergeant gave evidence on two points. First he spoke of a fact which he saw and then he related a statement made to him by another person.

Evidence of a physical act seen by the witness is always admissible.

Evidence of a statement made to a police officer during a police investigation is, in general, not admissible.

But the evidence recorded does not shew whether or not the sergeant was acting in the course of a police investigation at the material *time*.

This case, therefore, does not contain the materials on which a sound exposition of the provisions of Sections 117 and 124 of the Criminal Procedure Code could be based, and a hypothetical disquisition on these sections is not only undesirable but would tend to make "confusion worse confounded".

No Order.

In the Matter of the Trusts of the Will of HADJEE HAROUN BIN TAMBY KECHIK (deceased).

[Orig. Civil Juris. (Gordon-Smith, Ag. C.J.)
February 21, 1949]

[Singapore — Originating Summons No. 170 of 1948]

Will — Construction — Rule against Perpetuities — Wakaff — Charity — Evidence Ordinance S. 101.

Clause 2 of the Will of Hadjee Haroun bin Tamby Kechik (deceased) was as follows:—

> "I direct in the cause of God and in the hope of recompense from Him that my houses, Nos. 39, 40 and 41 Klang Road together with their lands, be made a Wakaff for the benefit of my wife, Inche Mah binti Mahmood and my sons and daughters, to be shared equally between them. In the event of all of them shall die, the benefit of the Wakaff shall descend to all my male and female grand-children in the male line to be shared equally between them. After them the benefit of the Wakaff shall pass to the most learned and pious man in this country. This shall go on for ever. I appoint the said Executors as Trustees of the said Wakaff. After this, my nearest and most intelligent heir shall be the Trustee of the said Wakaff. This shall go for ever".

An Originating Summons was taken out for the determination of the following questions:—

(1) Whether the trusts relating to the land and houses known as Nos. 39, 40 and 41 Klang Road, Singapore are void as infringing the rule against perpetuities.

(2) If so whether the said land and houses fall into the residue to be divided according to Clause VI of the said Will.

Held, (1) that the gift over after the deaths of the widow, children and grandchildren offends against the Perpetuity Rule and that such gift is not a charitable gift and is also void for uncertainty and vagueness; (2) that the life interest to the widow and children of the testator is good and that upon the determination of these estates the beneficial interests fall into and form part of the residue of the estate to be disposed of in accordance with Clause 6 of the Will.

Cases referred to:—

(1) *Ong Cheng Neo v. Yeap Cheah Neo* 1 Kyshe 344.

(2) *Chamberlayne v. Brockett* L.R. 8 Ch. 206.

(3) *In re Lord Stratheden and Campbell* (1894) 3 Ch. 265.

(4) *In the Matter of the Will and Trust Deed of Syed Shaik bin Abdul Rahman Alkaff* (unreported) Singapore Civil Suit No. 145 of 1922.

(5) *Ashabee and others v. Mahomed Hashim and another* 4 Kyshe 213.

ORIGINATING SUMMONS.

Ahmad bin Ibrahim for the Plaintiff.

B. H. Chia for the Defendant.

L. Rayner (Crown Counsel) for the Attorney-General.

Gordon-Smith, Ag. C. J.: — This Originating Summons involves the interpretation and construction of the Will of Hadjee Haroun bin Tamby Kechik, deceased, and asks:—

(1) Whether the trusts relating to the land and houses known as Nos. 39, 40 and 41 Klang Road, Singapore are void as infringing the rules against perpetuities;

(2) If so, whether the said land and houses fall into the residue to be divided according to Clause VI of the said Will.

The Will in question is dated the 11th December 1903, the Testator died on the following 31st December and Probate of the Will was granted on the 8th February 1904 to Mohamed bin Tamby Kechik, the deceased's brother and the Executor and Trustee therein named. The present Plaintiff is a grandchild of the deceased, and the Defendant obtained a grant of Letters of Administration *de bonis non* with the Will annexed on the 9th March 1934. In case of any doubts arising and by consent of all parties I appointed the present Defendant Hadjee Hussain bin Hadjee Haroun to be the Executor and Trustee of the Will.

The material and relevant clauses in the Will, read as follows:—

Clause II. "I direct in the cause of God and in the hope of recompense from Him that my houses, Nos. 39, 40 and 41 Klang Road together with their lands, be made a Wakaff for the benefit of my wife, Inche Mah binti Mahmood and my sons and daughters, to be shared equally between them. In the event of all of them shall die, the benefit of the **Wakaff** shall descend to all my male and female grandchildren in the male line to be shared equally between them. After them the benefit of the **Wakaff** shall pass to the most learned and pious man in this country. This shall go on forever. I appoint the said Executors as Trustees of the said **Wakaff**. After this, my nearest and most intelligent heir shall be the Trustee of the said **Wakaff**. This shall go on forever."

Clause VI. "The rest and residue of my estate property shall be distributed to my beneficiaries in accordance with the Mohamedan Law. All that has been mentioned in this Will has been uttered by me personally with clear utterance, and I have hereunto set my hand in the presence of Witnesses."

It is not, and cannot be, disputed that English law applies in the construction of this Will. (See Section 101, Evidence Ordinance, Cap. 13). It is not and cannot be disputed that the Rule against Perpetuities is also applicable. (See *Ong Cheng Neo v. Yeap Cheah Neo*[1], in the Privy Council)[1] Two points